UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

IN RE: CHANTIX (VARENICLINE) PRODUCTS LIABILITY LITIGATION

Master File No.: 2:09-CV-2039-IPJ

MDL No. 2092

This Order Relates To:

ALL CASES

PRETRIAL ORDER NO. 4B: SECOND AMENDMENT TO PRETRIAL ORDER NO. 4: DISCOVERY PLAN

On February 24, 2010, the Court issued Pretrial Order No. 4: Discovery Plan ("PTO 4"). On April 30, 2010, the Court issued Pretrial Order No. 4A: Amendment to Pretrial Order No. 4: Discovery Plan ("PTO 4A"). Section IV of PTO 4 set forth certain requirements for depositions, and Section V of PTO 4 set forth certain requirements relating to expert discovery.

At the request of the parties, the Court hereby amends and supplements Section IV and Section V of PTO 4 as outlined herein. This order shall not be construed to amend PTO 4 or PTO 4A in any respect other than as specified in this order.

IV. DEPOSITIONS.

A. Commencement of Depositions.

- 1. Depositions of common fact witnesses currently or formerly employed by Pfizer, including any depositions conducted pursuant to Federal Rule of Civil Procedure 30(b)(6) (collectively "common Pfizer witnesses"), may commence on January 3, 2011.
- 2. Depositions of plaintiffs, plaintiffs' physicians, family members of plaintiffs, sales representatives, and other relevant third party witnesses may commence on April 1, 2011; provided, however, that: (a) by February 1, 2011, the parties shall submit to the Court a joint proposal (or, to the extent they cannot reach agreement, their competing proposals) regarding the process for selecting a pool of initial cases eligible for such discovery (and, if necessary, trial), and such discovery may not commence until the Court issues an order regarding that process; and (b) no case will be eligible to be included in the initial pool of cases set for discovery and/or trial if the plaintiff has not filed a complaint in this MDL and served a substantially complete Plaintiff Fact Sheet, authorizations, and responsive documents by January 3, 2011.

Q. Coordination of Depositions with State Court Litigation.

Coordination of MDL with New York & Other State Court
 Litigation. To facilitate the coordination of these MDL

proceedings with state court product liability cases involving Chantix, the parties have agreed to modify PTO 4 and agree to request the entry of orders adopting PTO 4 and this order in applicable state court litigations.

- 2. <u>Deposition Length Generally</u>. All depositions shall be limited to one seven-hour day of examination by the noticing side, absent good cause shown or agreement of the parties. Examination by the non-noticing side shall not count against the seven-hour limit. The parties shall endeavor to limit duplicative questioning so as to be as efficient as possible with respect to deposition time.
- Witnesses or Expert Witnesses. For any common Pfizer witness or expert witness (both those pertaining to general liability or case-specific experts), if Lead Counsel for either side believes that the deposition will or may last beyond one day, Lead Counsel shall notify opposing Lead Counsel at the time of issuing the deposition notice or within a reasonable time thereafter, so that the parties may meet and confer with respect to whether any additional deposition time is warranted and schedule the deposition accordingly. Consent to additional deposition time shall not be unreasonably withheld. Absent exceptional circumstances or agreement of the parties, neither side may obtain additional deposition time if they do not request the additional time at the time of issuing the deposition notice or within a reasonable time thereafter.

4. Sequence of Examination of Common Pfizer Witnesses.

Consistent with Section IV.I of PTO 4, questioning of common Pfizer witnesses will be conducted in the following sequence: (1) examination by one attorney designated by MDL Plaintiffs' Lead Counsel; (2) examination by one attorney designated by New York Plaintiffs' Liaison Counsel; (3) examination by plaintiffs' counsel in any other state court litigations, provided that such counsel do not exceed one counsel per state; (4) examination by one attorney designated by Defendants' Lead Counsel; (5) any physician or healthcare provider's counsel, provided that such counsel do not exceed one counsel per state; (6) examination by individual counsel for the deponent, if any, other than counsel above; and (7) any re-examination by the counsel listed above, provided that time remains within the Plaintiffs' seven-hour limit. Plaintiffs' counsel shall cooperate with respect to the division of time so as to ensure that the interests of the state court plaintiffs' counsel are adequately addressed, and the Plaintiffs' attorneys designated to conduct the examinations shall coordinate with each other so as to conduct as thorough and non-duplicative an examination as is practicable. The parties shall leave sufficient time for examination by the attorney designated by Defendants' Lead Counsel, but such time shall not count against the Plaintiffs' seven hours.

- 5. Questions by Non-Designated Examiners. Any Plaintiffs' counsel not designated to examine a deponent may suggest matters for inquiry in any deposition by providing to the designated examiners a written list of questions and a brief explanation of such matters. Any Defendants' counsel in any related state action not designated to examine a deponent may suggest matters for inquiry in any deposition by providing to the examiner designed by Defendants' Lead Counsel a written list of questions and a brief explanation of such matters.
- 6. <u>Use of Depositions in MDL and State Court Proceedings</u>. Any examination conducted by any examiner may be used in the MDL proceedings, consistent with the law, rules of procedure and evidence, and orders of this Court. Any depositions taken in these MDL proceedings may be used in any state court action, in accordance with that State's law and rules of procedure and evidence.

V. REVISED SCHEDULE FOR EXPERT DISCOVERY.

K. Revised Schedule for Designations and Depositions of Experts.

Plaintiffs shall designate general causation and liability experts (as that term is used in Section V.H of PTO 4) on or before August 5, 2011. Defendant shall designate general causation and liability experts on or before September 2, 2011.

Plaintiffs shall designate rebuttal experts on or before September 30, 2011.

Depositions of Plaintiffs' general causation and liability experts may commence on October 31, 2011. Depositions of Defendant's general causation and liability

experts may commence fifteen days after the completion of depositions of Plaintiffs' general causation and liability experts. All depositions of general causation and liability experts shall be completed by February 24, 2012.

L. Revised Schedule for Motion Practice Involving Experts. Any Daubert or other motion directed to causation issues of general applicability, or any other dispositive motions must be filed by March 23, 2012. Oppositions to such motions must be filed by April 20, 2012, and any reply briefs must be filed by May 11, 2012.

DONE and **ORDERED** this the 5th day of October, 2010.

INGE PRYTZ JOHNSON U.S. DISTRICT JUDGE